



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Amended: 07/14/08

Bill No: [SB 1617](#)

Tax: Fire Prevention Fee

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Related Bills:

This analysis will only address the bill's provisions which impact the State Board of Equalization (Board).

BILL SUMMARY

Among its provisions, this bill would require the Board of Equalization (Board) to assess and collect a fire prevention fee charged on each structure on a parcel that is subject to property taxes and is within a state responsibility area (SRA) to fund fire prevention activities.

ANALYSIS

CURRENT LAW

Under existing law, Section 4125 requires the State Board of Forestry and Fire Protection (Cal Fire) to classify all lands within the state, without regard to any classification of lands made by or for any federal agency or purpose, for the purpose of determining areas in which the financial responsibility of preventing and suppressing fires is primarily the responsibility of the state.

Section 4102 defines "state responsibility areas" to mean areas of the state in which the financial responsibility of preventing and suppressing fires has been determined by Cal Fire to be primarily the responsibility of the state.

PROPOSED LAW

This bill would add Chapter 1.5 (commencing with Section 4210) to Part 2 of Division 4 of the Public Resources Code to, among other things, require Cal Fire to adopt emergency regulations to establish a fire prevention fee of fifty dollars (\$50) to be charged on each structure on a parcel that is subject to property taxes and is within a SRA. The fire prevention fee would be adjusted annually by Cal Fire beginning July 1, 2010, to reflect the percentage of change in the average annual value of the Implicit Price Deflator for State and Local Government Purchases of Goods and Services for the United States, as described.

Collection and Administration. Commencing with the 2010-11 fiscal year, the Board would be required to annually collect the fire prevention fee in accordance with the Fee Collection Procedures Law (Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code). Notwithstanding the 10 percent penalty for failure to timely pay provided under the Fee Collections Procedure Law, this bill would impose a penalty of 20 percent of the fee due for each 30-day period in which the fee remains unpaid.

REVISED COST ESTIMATE

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The Fee Collection Procedures Law contains "generic" administrative provisions for the administration and collection of fee programs to be administered by the Board. It was added to the Revenue and Taxation Code to allow bills establishing a new fee to reference this law, thereby only requiring a minimal number of sections within the bill to provide the necessary administrative provisions. Among other things, the Fee Collection Procedures Law includes collection, reporting, refund and appeals provisions, as well as providing the Board the authority to adopt regulations relating to the administration and enforcement of the Fee Collection Procedures Law.

The Department of Forestry and Fire Protection (Department) would be required to transmit to the Board, by January 1, 2010, and annually thereafter, the name and address of each person liable for the fee and the amount of the fee to be assessed. In addition, the Department would also provide the Board a contact telephone number for Cal Fire to be printed on the bill (assessment) to respond to fee-payer questions about the fee. However, the fee may not be collected in any fiscal year, commencing with the 2011-12 fiscal year, if there are sufficient amounts in the State Responsibility Area Fire Prevention Fund (Fund) to finance the costs of programs funded with the proposed fee.

The Board would not handle any appeal or claim for refund based on a determination by the Department that a person is required to pay the fee or regarding the amount of that fee. Those would be handled by the Department. If the Department determines that a person is entitled to a refund, that person would be required to make a claim for refund to the Board.

State Responsibility Area Fire Prevention Fund. After deducting moneys necessary for the payment of refunds and reimbursement for expenses incurred in the collection of the fee, the Board would be required to deposit the fire prevention fees collected into the Fund, which this bill would create in the State Treasury. Moneys in the Fund would be available to Cal Fire and the Department for fire prevention activities, as specified, in SRAs attributable to benefits conferred on structures subject to the fee.

Miscellaneous. This bill would define the term "structure" to mean "a building used or intended to be used for supporting or sheltering occupancy. For purposes of this subdivision, a building includes, but is not limited to, a mobilehome or manufactured home. The board may exclude from this definition building types that require no structural fire protection services beyond those provided to otherwise unimproved lands."

For purposes of the SRA fire prevention fees, existing law defines the following:

- Section 4002 defines "board" to mean State Board of Forestry and Fire Protection.
- Section 4003 defines "department" to mean Department of Forestry and Fire Protection.
- Section 4102 defines "state responsibility areas" to mean areas of the state in which the financial responsibility of preventing and suppressing fires has been determined by Cal Fire to be primarily the responsibility of the state.
- Section 4211 defines "structure" to mean a building used or intended to be used for supporting or sheltering occupancy. A building would include, but is not limited to, a mobilehome or manufactured home. Cal Fire may exclude from this definition building types that require no structural fire protection services beyond those provided to otherwise unimproved lands.

This bill would become effective January 1, 2009; however, the fire prevention fees would not be collected by the Board until the 2010-11 fiscal year.

BACKGROUND

In 2003, the Legislature enacted SB 1049 (Committee on Budget, Chapter 741) that imposed an annual SRA fire protection benefit fee on each parcel of land located, in whole or in part, within SRAs. The fee was to be collected by counties and used to fund fire prevention and suppression services by the department. However, the fee was repealed by SB 1112 (Committee on Budget, Chapter 219, Stats. 2004) before any fees were collected.

COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by the author and is intended to have homeowners located in a SRA to contribute to fire prevention activities designed to reduce the risk to their properties posed by wildfires.
2. **How would the Board be funded for administrative start-up costs?** This bill proposes a new fee to be collected annually by the Board commencing with the 2010-11 fiscal year. The Board would receive initial billing information from the Department by January 1, 2010. As such, the Board would incur administrative costs beginning with the 2009-10 fiscal year in order to develop computer programs, create the notice of determination (fire prevention fee bill), and hire appropriate staff.

Section 4214(b)(2) of the bill states that the Fund shall cover all startup costs incurred over a period not to exceed two years. Accordingly, the Board would be reimbursed for implementation costs, which would likely include a Budget Change Proposal requesting a General Fund loan to the Board paid back with fire prevention fees collected during the 2010-11 fiscal year.

3. **Suggested technical amendments.** The author may wish to amend the bill to address the following concerns:
 - Section 4225 would impose a penalty of 20 percent for late payments of the fee. The Fee Collection Procedures Law, under which the Board would collect the fee, imposes a 10 percent penalty for late payment. To avoid any confusion as to what penalty would apply, it is suggested amending Section 4225 to make it clear the penalty imposed pursuant to that section would take precedence over the penalty imposed under Section 55042 of the Fee Collection Procedures Law.
 - Section 4220 provides that a person may petition for a redetermination of the fee within 30 days after receipt of that charge. Using “receipt of the charge” could lead to a person claiming they never “received” the assessment. It is therefore suggested amending Section 4220 to align with Section 55081 of the Fee Collection Procedures Law, which provides that an amount becomes final within 30 days after service upon him or her of notice of determination.

Staff is working with the author’s office in drafting appropriate amendments. It should also be noted that the reference to “subdivision (d) of Section 4212” in Section 4213(d) should be corrected.

4. **Legal challenges of any new fee program might be made on the grounds that the fee is a tax.** In July 1997, the California Supreme Court held in *Sinclair Paint Company v. State Board of Equalization* (1997) 15 Cal.4th 866 that the Childhood Lead Poisoning Prevention Act of 1991 imposed bona fide regulatory fees and not

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taxes requiring a two-thirds vote of the Legislature under Proposition 13. In summary, the Court found that while the Act did not directly regulate by conferring a specific benefit on, or granting a privilege to, those who pay the fee, it nevertheless imposed regulatory fees under the police power by requiring manufacturers and others whose products have exposed children to lead contamination to bear a fair share of the cost of mitigating those products' adverse health effects.

Although this measure has been keyed by the Legislative Counsel as a majority vote bill, opponents of this measure might question whether the fee imposed is in legal effect "taxes" required to be enacted by a two-thirds vote of the Legislature.

COST ESTIMATE

The Board would incur non-absorbable costs to adequately develop a new fee program and collect from an estimated 760,000 new fee payers. These costs would include developing computer programs, developing forms and publications, creating fee payer registration based on billing information provided by the Department, mailing and processing billings, carrying out compliance efforts, developing regulations, training staff, and answering fee-related inquiries. These costs are estimated to be \$3,875,000 for fiscal year 2009-10, \$1,511,000 for fiscal year 2010-11, \$1,398,000 for fiscal year 2011-12, and each year thereafter.

REVENUE ESTIMATE

BACKGROUND, METHODOLOGY, AND ASSUMPTIONS

The Department estimates that there are 760,000 structures that fall within SRA boundaries. Based on this estimate and the assumption that all structure owners would comply with the proposed \$50 fee, total revenue generated would be about \$38 million (760,000 structures × \$50 fee = \$38 million).

REVENUE SUMMARY

The annual revenue impact from imposing a \$50 fee on structures that are subject to property taxes and are within state responsibility areas would amount to an estimated \$38 million in revenue.

Qualifying Remarks. The fire prevention fee, as proposed, would be adjusted annually by Cal Fire beginning July 1, 2010, to reflect the percentage of change in the average annual value of the Implicit Price Deflator for state and local government purchases of goods and services pursuant to Public Resources Code Section 4212(b).

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